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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

059864.01811

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Name _____

Application Number:

10/528,402

Filed: April 6, 2005

First Named Inventor:

Elena LIALIAMOU et al.

Art Unit: 2416

Examiner: Kenan CEHIC

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

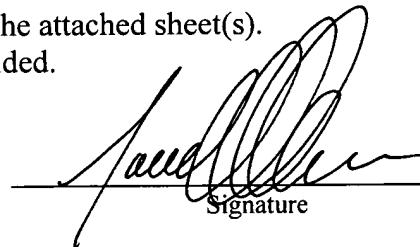
Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed (Form PTO/SB/96)

☒ Attorney or agent of record.
Registration No. 61,058

☐ Attorney or agent acting under 37 CFR 1.34.
Registration Number if acting under 37 CFR 1.34 _____


Signature

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Typed or printed name

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Telephone number

June 15, 2009

Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 form is submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Confirmation No.: 4428

Elena LIALIAMOU et al.

Art Unit: 2416

Application No.: 10/528,402

Examiner: Kenan CEHIC

Filed: April 6, 2005

Attorney Dkt. No.: 059864.01811

For: METHOD FOR CHARGING OF DATA REACHING A NETWORK ELEMENT
OF A COMMUNICATION NETWORK DURING A DATA SESSION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 15, 2009

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-21 and 23 in the above identified application. Claims 1-21 and 23 were finally rejected in the Office Action dated April 14, 2009. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review. Clear error exists in these final rejections, which warrant withdrawal of these rejections.

Claim 23 was rejected under the first paragraph of 35 U.S.C. § 112 as failing to comply with the written description requirement. In support of this rejection, the Office Action took the position that a computer program embodied on a computer-readable medium is not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had position of the claimed invention at the time the application was filed. Applicants respectfully assert that this rejection is clearly erroneous.

The specification discusses GPRS communication networks, access network nodes, gateway GPRS support nodes (GGSNs), core network nodes, network elements, home

subscriber servers, application servers, call processing servers, subscriber databases, and terminal devices, which are well-known to operate by executing computer programs embodied on computer-readable storage media. Further, the specification repeatedly discusses applications, which are known in the art to refer to computer programs. As such, the specification provides clear support for computer programs embodied on computer-readable storage media. Further, it would be impractical, if not impossible, to implement the networks and devices disclosed in the specification without using computer programs embodied on computer-readable media. As those skilled in the art would undoubtedly practice the disclosed invention using computer programs embodied on computer-readable storage media, it follows that those skilled in the art would appreciate that the inventors had possession of the invention as claimed in claim 23. Further, Applicants respectfully assert that the Office has inconsistently applied the knowledge of one of ordinary skill in the art to the pending claims by asserting that those skilled in the art would be sophisticated enough to combine Roberts with Schweitzer, Jogalekar, Gai, Hundscheidt, and Chaskar, but not appreciate that the inventors contemplated stored computer programs embodied on computer-readable storage media. Therefore, Applicants respectfully assert that this rejection is clearly erroneous and should be withdrawn.

Claims 1, 11, 21, and 23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Roberts (U.S. 2003/0152039). The Office Action took the position that all the limitations of the rejected claims are disclosed by Roberts. Applicants respectfully assert that this rejection is completely erroneous, and should be withdrawn.

Roberts discloses customer billing in a communications system. In Roberts, users are billed for goods and services purchased via a packet communications network. A set of rules is provided, and a respective billing tariff and account is determined from the rules and each packet address. Additionally, credit transfers are made between user accounts and the accounts of goods/services supplies held in a common database.

However, Roberts fails to disclose or suggest all the limitations of any of claims 1, 11, 21, and 23. For instance, Roberts fails to disclose or suggest “mapping each of the data packets to detected data flows in accordance with the at least one flow parameter included in

the respective data packet; matching said detected data flows to an enforced charging policy; and applying said enforced charging policy to said data flows,” as recited in claim 1, and as similarly recited in claims 11, 21, and 23.

Instead, Roberts determines billing tariff and account information for each packet based on rules and the packet address of each packet (Roberts, paragraph 12). Roberts does not discuss mapping each data packet to a data flow in accordance with a flow parameter and matching the data flow to an enforced charging policy. Rather, Roberts merely discloses a system that uses a packet address and a set of rules to determine billing information (Roberts, paragraph 14). A packet address is a parameter in a packet, and is not therefore comparable to the claimed data flow because the data flow corresponds to a flow parameter in a data packet, and also because it would make no sense for Roberts to map a data packet to a packet address that is already inside the data packet. Consequently, Roberts does not disclose data flows, flow parameters, or mapping data packets to a data flow in accordance with flow parameters in the data packets. Further, as Roberts fails to disclose such features, it would be impossible for Roberts to disclose matching a data flow to an enforced charging policy.

Accordingly, Roberts fails to disclose or suggest all the limitations of any of claims 1, 11, 21, and 23. Consequently, Roberts is not anticipated under 35 U.S.C. § 102(e). Therefore, Applicants respectfully assert that this rejection is in clear error and should be withdrawn.

Claims 5, 8-10, 15, 18-20, 22, and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roberts in view of Schweitzer (U.S. 2002/0013849). As discussed above, Roberts fails to disclose or suggest all the limitations of any of claims 1 and 11, from which claims 5, 8-10, 15, 18-20, 22, and 24 depend. Schweitzer discloses a system, method, and computer program for policy-based billing in a network architecture. However, Schweitzer fails to cure the deficiencies of Roberts. Accordingly, a combination of Roberts and Schweitzer fails to disclose or suggest all the limitations of any of claim 5, 8-10, 15, 18-20, 22, and 24, for their dependence from claims 1 and 11, and for the limitations recited therein. Therefore, this rejection is in clear error and should be withdrawn.

Claims 2, 6, 12, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roberts in view of Jogalekar (U.S. 7,002,977). As explained previously, Roberts fails to disclose or suggest all the limitations of any of claims 1 and 11, from which claims 2, 6, 12, and 16 depend. Jogalekar discloses policy based accounting and billing for network services, but does not cure the deficiencies of Roberts with respect to claims 1 and 11. Consequently, a combination of Roberts and Jogalekar fails to disclose or suggest all the limitations of any of claims 2, 6, 12, and 16, for their dependence on claims 1 and 11, and for the limitations recited therein. As such, this rejection is in clear error and should be withdrawn.

Claims 3 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roberts in view of Gai (U.S. 7,185,073). As discussed previously, Roberts fails to disclose or suggest all the limitations of claims 1 and 11. Gai discloses a method and apparatus for defining and implementing high-level quality of service policies in computer networks. However, Gai does not cure the deficiencies of Roberts. Therefore, a combination of Roberts and Gai fails to disclose or suggest all the limitations of claims 3 and 13, for their dependence on claims 1 and 11, and for the limitations that are recited therein. This rejection, therefore, is in clear error and should be withdrawn.

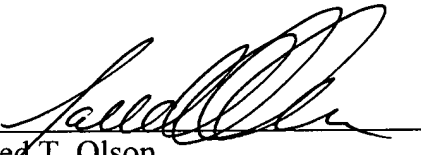
Claims 4 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roberts in view of Hundscheidt (U.S. 7,369,541). As discussed above, Roberts fails to disclose or suggest all the limitations of claims 1 and 11. Hundscheidt discloses a method and apparatus for multicasting in a point-to-point oriented packet-switched network. However, Hundscheidt does not cure the deficiencies of Roberts with respect to claims 1 and 11. Therefore, a combination of Roberts and Hundscheidt fails to disclose or suggest all the limitations of claims 4 and 14, for their dependence on claims 1 and 11, and for the limitations that are recited therein. Accordingly, this rejection is in clear error and should be withdrawn.

Claims 7 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roberts in view of Chaskar (U.S. 2002/0122432). As has been explained, Roberts fails to disclose or suggest all the limitations of claims 1 and 11. Chaskar discloses a method and

apparatus for communicating data based on a plurality of traffic classes. However, Hundscheidt does not cure the deficiencies of Roberts with respect to claims 1 and 11, and therefore a combination of Roberts and Chaskar fails to disclose or suggest all the limitations of claims 7 and 17, for their dependence on claims 1 and 11, and for the limitations that are recited therein. This rejection is therefore in clear error, and Applicants respectfully request that it be withdrawn.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,


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Enclosures: PTO/SB/33 Form
Notice of Appeal
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